

Legality of Eyman anti-tax initiative unclear, state Supreme Court says

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In a unanimous ruling, the court said opponents have a right to challenge the measure in court.

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OLYMPIA — The state Supreme Court says the legality of Tim Eyman's tax initiative that voters approved last week is unclear, and the case can be argued before a lower court judge.

The high court, in a unanimous opinion Thursday, laid out its reasoning for its September decision not to block Initiative 1366 from the November ballot. The court wrote that opponents had not made a slam-dunk case that it was unconstitutional. But the justices said the opponents, including some lawmakers, do have a right to challenge the measure.

The initiative, which passed with 52 percent of the vote, gives lawmakers a choice: Send a constitutional amendment to voters that would require a two-thirds majority in the Legislature to raise taxes, or see a cut in the state sales tax. The Supreme Court noted it has never before ruled on an initiative that had such alternatives.

"If the initiative called only for a reduction in the sales tax, there would be no pre-election issues," Chief Justice Barbara Madsen wrote for the court. "If it called only for a two-thirds constitutional amendment, it would clearly be outside the scope of the people's initiative power. This court has never decided a case in which an initiative offered contingent alternatives and, if so, whether one invalid purpose would prevent it from being on the ballot."

I-1366 would decrease the 6.5-percent state sales tax to 5.5 percent unless the Legislature approves a constitutional amendment before April 15 that voters would

weigh in on later that year. Currently, taxes can be raised through a simple-majority vote of the Legislature.

Opponents sued over the summer to keep the measure off the ballot, arguing it overstepped the powers granted to the citizen initiative process.

In August, King County Superior Court Judge Dean Lum found that I-1366 appeared to do just that. The state Constitution cannot be amended by initiative, he said, nor can the process of amending the Constitution be proposed by initiative. Instead, amendments must originate in either house of the Legislature.

Nevertheless, Lum declined to block the initiative from the ballot, saying the law wasn't clear about whether doing so might violate the free-speech rights of the initiative's proponents. The high court didn't weigh in on the free-speech elements, saying it wasn't necessary because the appellants didn't meet other thresholds.

"Our decision today does not hold that I-1366 is necessarily within the scope of the people's initiative power," the court wrote in a footnote. "We hold only that appellants have not met their high threshold burden of showing that I-1366 is clearly beyond the scope of the initiative power in order to warrant a preliminary injunction."

Previous voter-approved initiatives sponsored by Eyman required a supermajority vote on taxes, but the state Supreme Court struck that requirement down in 2013, saying it was unconstitutional.

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